

HJR 46: Study of Election Laws
Mail Ballot Pilot Project: Options and Implications
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for the State Administration and Veterans' Affairs Interim Committee
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A number of factors must be considered and decided in the drafting of legislation for a mail ballot pilot project. These decisions range from the number of counties and types of elections to include in a pilot project to the types of information that should be gathered to help evaluate whether mail ballot elections increased turnout, reduced costs, or created any problems for voters.

This document is designed to provide the State Administration and Veterans' Affairs Interim Committee with:

- ◆ an overview of the sections the bill would likely contain;
- ◆ the topics each section would cover;
- ◆ possible options for each topic; and
- ◆ the implications of selecting various options.

The committee's decisions on each of the topics will provide guidance on the parameters for the pilot project.

Where questions are posed for committee consideration, possible options and their implications are presented in table format, along with space for comments or preferred decisions. **Committee decisions are represented in the Comments/Decisions column, in bold-faced type.**

Section 1: Legislative Intent

This section will set out the reasons why the pilot project is being undertaken and why it is being limited to only a selected number of counties. These reasons may include:

- the increasing number of people voting by mail, via absentee ballots;
- the possibility that mail ballot elections may increase voter turnout;
- the possibility that mail ballot elections will address cost, resource, and logistical issues, including the costs of holding hybrid elections and recruiting and paying election judges; and
- the Legislature's desire to:
 - gather information on whether mail ballot elections increase turnout, reduce costs, and improve the administration of elections; and
 - test the effects of mail ballot elections in statewide and federal elections, before implementing their use on a wider scale.

Other ideas **SAVA will review draft language and suggest amendments at a future meeting.**

Section 2: Participating Counties

This section of the bill will specify the counties that will participate in the pilot project. Clerks and recorders are being surveyed to determine their interest in participating, and only those counties expressing interest would be selected. The answers to the following questions will provide additional guidance in the selection process.

Question 1: How many counties should be included in the pilot project?

Options	Implications	Comments/Decisions
5 or fewer counties	<ul style="list-style-type: none">• Less than 10%• May be harder to obtain an appropriate mix of counties for evaluation	
6 to 10 counties	10% to 18%	
11 to 15 counties	20% to 27%	SAVA approved a target of 12 counties

Question 2: How should geographic and demographic balance be determined?

Options	Implications	Comments/Decisions
An equal number of counties representing east, west, north, south, and central Montana OR	<ul style="list-style-type: none">• One from each region would be five, two would be 10, and three would be 15.• Depending on interest in the pilot project, it may or may not be possible to meet these targets	
A geographic sampling without a specific target AND	May allow more flexibility to place interested counties in the pilot project	SAVA approved achieving a good geographic sampling but allowed flexibility in determining the number of counties from each area
Demographic diversity, representing an equal number of rural, urban, and tribal counties OR		
A variety of rural, urban, and tribal counties without a specific target		SAVA approved achieving a good demographic sampling but allowed flexibility in determining the number of each type of counties

Question 3: Should all participating counties have previous mail ballot experience?

Options	Implications	Comments/Decisions
Yes	<ul style="list-style-type: none">• Participating counties would be familiar with mail ballot procedures• May exclude some counties that are willing to participate	
No	Would provide information on what issues a county may experience in setting up mail ballot elections when it hasn't previously used them	SAVA decided against requiring previous mail ballot experience

Question 4: Should some polling place counties be included, for data collection purposes?

Options	Implications	Comments/Decisions
Yes	<ul style="list-style-type: none">• Would allow a comparison of turnout, cost, and other issues between mail ballot counties and polling place counties, for the same types of elections in the same year• May increase costs of project, if project covers this cost	SAVA agreed that having this data for comparison purposes would be optimum, but counties would have to volunteer to participate
No	<ul style="list-style-type: none">• Turnout figures could still be compared to some extent• May not be able to make apples-to-apples comparison on all aspects of the election	

Section 3: Time Period

The pilot project could be made effective upon passage and approval and could include all elections conducted during 2009 and 2010, or only elections held in 2010.

Question 1: Over what time period should the pilot project be conducted?

Options	Implications	Comments/Decisions
2009 and 2010	Would give counties a chance to work out any problems in advance of the federal election in 2010	SAVA approved making the pilot project effective for both the 2009 and 2010 elections
Only 2010	Would allow more time for voters and election administrators to prepare	

Section 4: Elections Involved in Pilot Project

The pilot project is designed to provide more information on the effects of mail ballot elections in statewide and federal elections. It could require that all elections in the designated time period be held by mail or it could exclude certain types of elections.

Question 1: Should all elections be held by mail during the pilot project?

Options	Implications	Comments/Decisions
Yes, include all municipal, county, special district, school, statewide, and federal elections	<ul style="list-style-type: none">• Makes administration process easier for participating counties• May increase voter turnout• Requires all school elections to be conducted by mail, which could create issues for or opposition by schools• Would the elimination of polling places and most election judges for a time-limited period create problems in the future?• May increase the costs of a mill levy or bond election, making the election costs disproportionately high compared to the money being raised	
No, specify that certain elections are excluded from the project	<ul style="list-style-type: none">• Counties would continue to keep two election systems in place and ready to go, as they do now if they run any mail ballot elections• May create confusion among voters	
If so, which elections should be excluded	<ul style="list-style-type: none">• School elections• Special purpose district elections• Municipal• Other?	
Require certain elections to be conducted by mail and allow counties to decide whether to exclude any other elections	<ul style="list-style-type: none">• Would allow for uniformity in data collection for certain specified elections, such as federal elections• Would allow decision making on a local level for other elections	
Other		SAVA decided to require that any election conducted by the county election administrator be conducted by mail during the pilot project period

Section 5: Polling Places and Places of Deposit

The use of mail ballot elections for new types of elections raises questions about whether the pilot project needs to specifically address the number of places of deposit to be established.

In addition, SAVA members have discussed whether polling places should be maintained in counties participating in the pilot project.

Question 1: Should polling places be maintained?

Options	Implications	Comments/Decisions
Yes	<ul style="list-style-type: none">• May provide an indication of whether people prefer mail ballot or polling place elections• May create confusion for voters and election workers• Likely to increase election costs because of the costs of printing and mailing additional ballots and hiring election judges• Creates potential for double voting and will require some ballots to be handled as provisional ballots• Could delay determination of the outcome of the election	
No	<ul style="list-style-type: none">• Would provide a true test of mail ballot-only elections• Would avoid confusion over voting method• Would reduce potential problems in administration of the elections	SAVA decided against keeping the polls open at the same time a mail ballot election is held

Question 2: Should a minimum number of places of deposit be required?

Current law requires that the county election administrator's office be a "place of deposit," where voters can return ballots in person. The law also allows election administrators to designate additional places of deposit, but does not require them to do so.

During its review of Title 13, the HJR 46 work group discussed whether a higher number of places of deposit should be established in statute. The group decided against changing the existing mail ballot laws at this time, but did recommend that some requirements be placed in law if mail ballot elections were used for federal elections.

Because a pilot project would allow mail balloting for federal elections, SAVA may want to address this issue for the pilot project.

Options, implications, and SAVA's decision are listed on the following page.

Options	Implications	Comments/Decisions
Yes, increase the minimum number of places of deposit	<ul style="list-style-type: none"> • Gives voters a better opportunity to return ballots in person if they don't want to mail them • Will likely reduce the distance people would need to travel to return the ballot • May increase costs of election over one in which there were no off-site places of deposit 	SAVA agreed that an increased number of places of deposit would be preferable but did not want to require counties to have more places of deposit than they had polling places in past years
Yes, but only for federal elections	<ul style="list-style-type: none"> • Would recognize that smaller elections may not need as many places of deposit • Would address concerns that voters in a federal election need as many options as possible • Places a different emphasis on accessibility for federal elections • May create confusion for voters from election to election 	
No	<ul style="list-style-type: none"> • Would allow counties the flexibility to set a number they felt worked best for the county and the particular election • Voters in counties with fewer places of deposit may feel at a disadvantage • Would this create disparities in turnout that could affect races where candidates or issues were on ballots in multiple counties? 	

Question 3: If yes, how many?

The HJR 46 work group discussed two possible options, presented below.

Options	Implications	Comments/Decisions
At least four or the number certified in the 2006 elections, whichever is less	<ul style="list-style-type: none"> • Recognizes that some counties had fewer polling places in 2006 • Provides more opportunity for returning ballots • Will likely reduce the distance required to travel to return ballots in person or use an AutoMark machine 	SAVA selected this option for the pilot project but may consider population formulas, as well

Options	Implications	Comments/Decisions
Seven or the number certified in the 2006 elections, whichever is less	<ul style="list-style-type: none"> • Recognizes that some counties had fewer polling places in 2006 • Represents about the mid-point of the number of polling places in 2006 • Will likely reduce the distance required to travel to return ballots in person or use an AutoMark machine • May add to costs of the election 	

Question 4: Should AutoMark machines be required at all places of deposit?

All counties have AutoMark machines for use by voters with disabilities, purchased with Help America Vote Act funds. The larger cities that held mail ballot elections in November 2007 all placed AutoMark machines at each place of deposit.

The HJR 46 work group recommended several changes to existing mail ballot provisions in Title 13, including a requirement that all places of deposit have an accessible voting machine

Options	Implications	Comments/Decisions
Yes	Provides greater opportunity for people with disabilities to vote on their own with the machine	SAVA selected this option
No	<ul style="list-style-type: none"> • Will likely limit access or require people with disabilities to travel farther to vote on an AutoMark • Significant change from current polling place practices that make an AutoMark machine available at each polling place 	
If a minimum number of places of deposit are required, also require AutoMark machines at those places	<ul style="list-style-type: none"> • Ensures that AutoMarks are at the minimum number of places of deposit • Gives counties flexibility if they have established more than the minimum number of places of deposit • May create confusion for voters 	

Section 6: Information Collection/Reporting

Collecting information is a key reason for the pilot project; this section would specify the types of information that must be collected. It also could provide state funding to cover the costs.

Question 1: What types of information should be collected during the pilot project?

Options	Elements	Comments/Decisions
Turnout	This could include the number of ballots mailed, ballots cast, and ballots rejected, as well as any available demographic information on turnout among certain voter groups, such as Native Americans, students, or others	
Mail Delivery	This could include when ballots were mailed and how many ballots were returned as undeliverable, as well as the final resolution of those returned ballots	
Voter reactivation of registration	This could include the number of voters who reactivated their registration and how that reactivation was accomplished (such as by mail, in person, during late registration, etc.), when purging of voter lists was completed, and what outreach was done to notify voters	
Signature verification	This could include information on what type of process was used to verify signatures	
Ballot handling	This could include the number of people who voted provisionally, the number of ballots received after Election Day,	
Outreach and education	This could include information on methods used to publicize the need to update registration and mailing addresses and to return ballots in person after a certain date	
Places of deposit	This could include information on the number, location, and hours of places of deposit, the number of people returning ballots in this manner; the number of ballots returned by someone other than the voter, and the number and usage of AutoMarks	
Costs	Detailed cost information on supplies, mailing costs, and personnel	
Other		SAVA will review draft language to see whether more data should be collected or any listed data is unnecessary

Question 2: To whom should the information be reported?

Options	Implications	Comments/Decisions
Secretary of State		
SAVA/Legislature		
All of the above		SAVA selected this option

3. Should the state cover all or part of the costs of data collection?

Options	Implications	Comments/Decisions
Cover all costs of data collection	<ul style="list-style-type: none">• May make participation in the pilot project more attractive• Will need to work closely with participating counties to determine likely cost	SAVA selected this option and staff will work with counties to determine the appropriation to include in the bill
Cover a portion of the costs	<ul style="list-style-type: none">• May make participation in the pilot project less attractive to counties• May limit the number of counties willing to participate• May violate 1-2-112 through 1-2-114, MCA, involving imposition of new duties without funding	
Do not cover the costs	<ul style="list-style-type: none">• May make participation in the pilot project less attractive to counties• May violate 1-2-112 through 1-2-114, MCA, involving imposition of new duties without funding	

Additional Issue: Data Collection in the 2008 Elections

Some members of the HJR 46 work group felt that it would be helpful to have counties collect certain data on voter turnout and registration for the 2008 elections, so pre-pilot project information existed for purposes of comparison.

SAVA could encourage this data collection as part of the ongoing study process by notifying counties, or it could make collection of this data a prerequisite for participating in the pilot project.

Question 1: Should collection of certain statistics in the 2008 elections be a requirement for participation in the mail ballot pilot project?

Options	Implications	Comments/Decisions
Yes	<ul style="list-style-type: none"> • Could provide additional data to help evaluate the results of the pilot project • May make participation in the pilot project less attractive to counties because of the work and cost involved • No mechanism for compensating the counties? 	
No	<ul style="list-style-type: none"> • May make some pre- and post-pilot project comparisons more difficult • May make participation in the pilot project more attractive to counties 	
Don't require, but strongly urge	<ul style="list-style-type: none"> • Could not be done in legislation, but could be done through a letter this interim 	
Other		SAVA asked staff to check with the interested counties to see what resources this data collection may require and whether they would still participate if they had to collect it